

## AMENDMENT NO. 361

Mr. COCHRAN. Mr. President, I now send an amendment to the desk, on behalf of Mr. REID and Mr. LEVIN, regarding retired pay and veterans disability compensation, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. REID, for himself, and Mr. LEVIN, proposes an amendment numbered 361.

Mr. COCHRAN. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of the Senate that veterans with a service-connected disability rated as total by virtue of unemployability should be treated as covered by the repeal of the phase-in of concurrent receipt of retired pay and veterans disability compensation for military retirees)

On page 169, between lines 8 and 9, insert the following:

SENSE OF SENATE ON TREATMENT OF CERTAIN VETERANS UNDER REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS DISABILITY COMPENSATION

SEC. 1122. It is the sense of the Senate that any veteran with a service-connected disability rated as total by virtue of having been deemed unemployable who otherwise qualifies for treatment as a qualified retiree for purposes of section 1414 of title 10, United States Code, should be entitled to treatment as qualified retiree receiving veterans disability compensation for a disability rated as 100 percent for purposes of the final clause of subsection (a)(1) of such section, as amended by section 642 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 1957), and thus entitled to payment of both retired pay and veterans' disability compensation under such section 1414 commencing as of January 1, 2005.

Mr. REID. Mr. President, I rise today to speak on the issue of concurrent receipt and the Bush administration's unfair attempt to continue to restrict some of our Nation's veterans from receiving the full pay and benefits they have earned.

We have debated the ban on concurrent receipt for many years. It is an unfair and outdated policy that I and many others in this Chamber have worked hard to end.

Over the years, we have made some progress.

In 2003, the Congress passed my legislation which allowed disabled retired veterans with at least a 50-percent disability rating to become eligible for full Concurrent Receipt benefits over a 10-year period. This was a significant victory, and as a result of the legislation, hundreds of thousands of veterans today are on the road to receiving both their retirement and disability benefits.

And we made further progress last year, with the help of Senator LEVIN and others, when we were able to elimi-

nate the 10-year phase-in period for the most severely disabled veterans—those who were 100 percent disabled. A 10-year waiting period was particularly harsh for these veterans, some of whom would not live to see their full benefits restored over the 10-year period, and others who could not work a second job and were in fact considered “unemployable.” So we passed legislation to end the waiting period and provide some relief to these deserving, totally disabled veterans.

Unfortunately, the administration's implementation of this legislation has created a new inequity by discriminating between two categories of totally disabled retirees.

There are those veterans who have been awarded a 100 percent disability rating by the VA and those whom the VA has rated “totally disabled”. The veterans considered totally disabled are paid at the 100 percent disabled rate. This is because the VA has certified that their service-connected disabilities have left them unemployable.

I ask unanimous consent to have printed in the RECORD a letter sent by the Defense Department to the Office of Management and Budget on this issue last December.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. REID. The letter indicates clearly the Defense Department General Counsel's opinion that both of these groups should be paid their full retired pay and disability compensation under the law Congress passed last year, and it requested permission from OMB to execute the payments to unemployables.

That permission apparently was not forthcoming, since the Pentagon is still withholding payments for the “unemployable” group after all these months—contrary to its own General Counsel's legal review.

For all other purposes, both the VA and the Defense Department treat unemployables exactly the same as those with 100 percent disability ratings.

In fact, these unemployables must meet a criterion that not even the 100 percent-rated disability retirees have to meet. They are certified as unable to work because of their service-connected disability. The administration pays equal combat-related special compensation to both categories. Yet the administration is discriminating unemployables and 100 percent disabled retirees with noncombat disabilities in flagrant disregard for the letter of the law as interpreted by its own legal counsel.

The time to act is now.

As we stated last year, these veterans do not have 10 years to wait for the full phase-in of their benefits. The administration needs to act quickly.

Hopefully, the expression of the Senate contained in this bill will clarify the intent of the Congress so those most severely disabled veterans will begin to reap the benefits of last year's legislation.

## EXHIBIT 1

OFFICE OF THE  
UNDER SECRETARY OF DEFENSE,  
Washington, DC, Dec. 21, 2004.

Dr. KATHLEEN PEROFF,  
Deputy Associate Director for National Security,  
Office of Management and Budget, Wash-  
ington, DC.

DEAR Ms. PEROFF: This letter is to advise your office of how the Department intends to compensate members for full concurrent payment of military retired pay in addition to their Veterans' Affairs (VA) disability compensation under the provisions of section 1414 of title 10, United States Code, as amended by section 642 of the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). Section 642 eliminated the phase-in period for those retirees/veterans determined by the Department of Veterans Affairs to have a disability or combination of disabilities rated as 100 percent disabled.

An issue has arisen as to whether this change in the law includes those who are rated as less than 100 percent disabled, but for whom a rating of 100 percent (total) disability is assigned by the VA because the individual is deemed unemployable. Based on a legal review of the relevant statutory authority and legislative intent language (10 U.S.C. 1414; H. Rept. 108-767), we intend to consider these unemployable retirees/veterans covered by the exemption to the phase-in period and grant them full concurrent payments beginning January 1, 2005.

The determination to include these unemployable retirees/veterans will result in an added cost of about \$1.3 billion in Military Retirement Fund (MRF) outlays over the course of the phase-in period. It will not affect costs after the phase-in period or carry any added increase in accrual costs. Further, all the added cost of full concurrent receipt is passed directly to the Treasury for payments to the MRF. While verbal communication with relevant congressional committee staff suggests that Congress may not have intended to exempt from the phase-in period those unemployable retirees/veterans compensated for 100 percent disability, neither the amended statute nor legislative intent language support this position.

We plan to issue guidance to the Defense Finance and Accounting System and the Services on the matter as quickly as possible. Please advise us if the Administration has any differing views.

Sincerely,

CHARLES S. ABELL.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 361) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 424

Mr. COCHRAN. Mr. President, I now send an amendment to the desk, on my own behalf, to make a technical correction to the bill. I ask it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 424.

Mr. COCHRAN. I ask unanimous consent the reading of the amendment be dispensed with.